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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,586	10/29/2001	Edwin E. Suer	5788-01001	4694

7590 04/05/2006

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EXAMINER

ALIE, GHASSEM

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/047,586	Applicant(s) SUER ET AL.	
	Examiner Ghassem Alie	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/17/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,8,11,12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7,9,10,13,14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Appeal Brief

1. In view of the appeal brief filed on 01/17/06, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Comment

2. It should be noted that applicant has elected Species II (Figs. 11-19) on 11/15/04 and has indicated that claims 1, 2, 4, 6, 7, 9, 10, 13, 14, 16, and 17 read over the elected Species. Therefore, claims 3, 5, 11, 12, and 15 have been withdrawn from consideration.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the one hole extending through the food receptacle and at least one corresponding prong extending through the at least one hole as set forth in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It should be note that Figs. 11-19 do not show that the receptacle 66 has a hole and a prong extending from the hole.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The specification is objected to under 37 CFR 1.71 because it fails to teach how the food item is held or gripped by the food holder 66. See page 5, lines 15-25 in the specification.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 5-7, 13, and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 5-7, 13, and 14, the specification fails to teach that how the receptacle 66 hold the food item. It is not clear how the food item is held or gripped by the food holder 66 during the slicing operation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodges et al. (6,018,876), hereinafter Hodges. Regarding claim 1, Hodges teaches a food slicer utensil 10 having an elongated hollow body, which is supporting an elongated food item 30. Hodges also teaches that the elongated hollow body includes an inner wall, and outer wall, forming an interior, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Hodges also teaches a plurality of the blades 36, 38 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. It should be noted that the blades 36 or 38 are extended across the interior from one side of the interior wall to another side of the interior wall. Hodges also teaches that the plurality of blades 36, 38 are the only blades of the food utensil and each of

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the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 36, 38. It should be noted that outer most portions of the blades 36, 38 are laterally aligned with respect to one another. See Figs. 1-6 and col. 3, lines 5-64 in Hodges.

Regarding claim 2, Hodges teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Hodges also teaches a plurality of the blades 36, 38 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30.

Regarding claim 9, Hodges teaches everything noted above including that the plurality of blades 36, 38 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Hodges teaches everything noted above including that the plurality of blades 36, 38 is fixed to open first end thereby preventing movement of the plurality of blades. It should be noted that the first end also is considered to be the location that blades are mounted to the inner wall of the tool 10. See Fig. 3 Hodges.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Berler (4,250,771). Regarding claims 6, 7, and 13, Hodges teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Hodges' food utensil with the food receptacle, as taught by Berler, in order to facilitate the slicing of the food by holding the food that it could be hot or hold the food item by the holder rather than the hand.

11. Claim 1, 2, 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Way (Des. 284,441) in view of Pesce (2,675,580). Regarding claim 1, Way teaches a utensil having an elongated hollow body, which is supporting an elongated food item. Way also teaches that elongated hollow body includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Way also teaches a single blade extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item. Way also teaches that the blade is the only blade of the food utensil. See Figs. 1-4 in Way. Way does not teach that a plurality of blades which is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. However, the use of a plurality of blade is well known in the art such as taught by Pesce. Pesce teaches a utensil 10 having an elongated

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hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. It should be noted that way teaches a single blade for slicing an elongated food item. However, Pesce teaches that the food slicer can have one blade or more than one blade as desired. Therefore, it would have been obvious to a person of ordinary skill in the art to provide Way's food slicer with blades 46, as taught by Pesce, in order to slice the food item into a different desired shape and size.

Regarding claim 2, Way, as modified by Pesce, teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Way as modified by Pesce, also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. See Fig. 15 in Pesce.

Regarding claim 4, Way teaches that the food slicer includes a base fixed to the second end. See Fig. 1 in Way.

Regarding claim 9, Way, as modified above, teaches everything noted above including that the plurality of blades 46 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Way, as modified above teaches everything noted above including that the plurality of blades 46 is fixed to open first end thereby preventing movement of the plurality of blades. See Fig. 15 in Pesce.

12. Claim 1, 2, 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Way. Regarding claim 1, Pesce teaches a utensil 10 having an elongated hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. Pesce does not expressly teach that the length of the elongated body is greater than its diameter. However, the use of a utensil for cutting an elongated food item and having an elongated body with a length greater than its diameter is well known in the art such as taught by Way. Way teaches a food for cutting an elongated food item and having an elongated body with a length greater than its diameter. See Figs. 1-4 in Way. It would have been obvious to a person ordinary skill in the art to provide Pesce's food slicer with an elongated

body, as taught by Way, since the elongated body provides a better support of elongated food. In addition, it would have been obvious for a person of ordinary skill in the art to provide Pesce's hollow body with a length greater than its diameter, since the use of food slicer with elongated body that corresponds to an elongated food item is old and well known in the art, and it is well known that an elongated body provides a better support for an elongated food.

Regarding claim 2, Pesce teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Pesce, also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. See Fig. 15 in Pesce.

Regarding claim 9, Pesce teaches everything noted above including that the plurality of blades 46 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Pesce teaches everything noted above including that the plurality of blades 46 is fixed to open first end thereby preventing movement of the plurality of blades. See Fig. 15 in Pesce.

13. Claims 6, 7, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Way and in further view of Berler. Regarding claims 6 and 7, Pesce teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first

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open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Pesce's food utensil, as modified by Way, with the food receptacle, as taught by Berler, in order to facilitate the slicing of the food by holding the food item while the food item is being sliced.

Regarding claims 16 and 17, Pesce, as modified above, teaches that the food holder or a means for affecting a relative motion between the plurality of blades and the elongated food item whereby at least a portion of the elongated item is sliced within the interior. It should be noted that the food holder moves the food item relative to the fixed blades.

Comment

14. It should be noted that claims 13 and 14, are not rejected over prior art, since the prior art does not teach that the receptacle is slidably engaged along the outer wall of the hollow body. However, in view of the issues under 35 U.S.C. 112, first paragraph, and the objection to the specification under 37 CFR 1.71 and the drawing objection, the allowability of the claimed subject matter cannot be determined at this time.

Response to Arguments

15. Applicant's arguments with respect to claims 1, 2, 4, 6, 7, 9, 10, 13, 14, 16, and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

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MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (too-free).

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GA/ga

March 29, 2006

A handwritten signature in black ink, appearing to be 'ay' or similar, written in a cursive style.

Allan N. Shoap
Supervisory Patent Examiner
Group 3700